No. 15475

United States
COURT OF APPEALS
for the Ninth Circuit

E. V. PRENTICE MACHINERY CO. and
PRENTICE MACHINERY WORKS, INC.,
Appellants,

vs.

ASSOCIATED PLYWOOD MILLS, INC.,
Appellee.

APPENDIX TO APPELLANTS' BRIEF

Appeal from the United States District Court for the District of Oregon.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

E. V. PRENTICE MACHINERY CO., Plaintiff,	)	Civil
vs.	)	No. 7091
	)	ORDER
ASSOCIATED PLYWOOD MILLS, INC., Defendant.	)	

By order dated May 27, 1955, certain issues were segregated in accordance with Rule 42 (b) of the Rules of Civil Procedure. The court in an opinion dated August 16, 1955, held that the cause of action asserted in this case is separate and distinct from the cause of action litigated in a prior case between the parties, being Civil No. 6579. The court further held that the present action is not barred by the doctrines of res judicata and merger. In accordance with such opinion, the motion of defendant, Associated Plywood Mills, Inc., for summary judgment is denied.

Plaintiff's application for a ruling that the judgment of May 8, 1953, entered in Civil No. 6579, is res judicata in the present action and that the defendant Associated is collaterally estopped from denying the findings contained in the court's opinion of April 17, 1953, is denied. However, this denial is without prejudice to plaintiff's privilege of reasserting such claims at the trial.

Plaintiff may not read the court opinion or the findings of April 17, 1953, in Civil No. 6579, or any part thereof, to the jury or refer to them in the presence of the jury without prior authorization from the court.

Dated this 28th day of October, 1955.

Gus J. Solomon,
Judge.

E. V. PRENTICE CO.
Portland, Oregon

COMPARATIVE INCOME STATEMENT

	Year ended 12/31/48	Year ended 12/31/49	Year ended 12/31/50	Year ended 12/31/51	Year ended 12/31/52 Total for year 1952	1/1/52 to 6/30/52	7/1/52 to 12/31/52	Period 1/1/53 to 9/30/53	Year ended 9/30/54	Year ended 9/30/55
Sales	78,802.84	49,986.42	273,113.73	946,339.95	806,836.57	576,650.81	230,185.76	225,215.76	569,588.11	1,043,122.73
Cost of goods sold	60,539.12	34,860.96	215,654.21	769,387.89	618,325.83	412,951.36	205,374.47	144,847.15	380,697.61	688,694.04
Gross profit on sales	18,263.72	15,125.46	57,459.52	176,952.06	188,510.74	163,699.45	24,811.29	80,368.61	188,890.50	354,428.69
Commission income	4,660.06	12,048.30	16,220.09	71,561.93	31,896.10	21,097.88	10,798.22	31,879.77	20,072.92	19,972.34
Gross profit and commissions	22,923.78	27,173.76	73,679.61	248,513.99	220,406.84	184,797.33	35,609.51	112,248.38	208,963.42	374,401.03
Other income -										
Equipment rent				510.00	2,550.00	900.00	1,650.00	3,150.00	16,661.00	52,897.75
Less: Depreciation applicable					(1,176.67)	(234.66)	(942.01)	(1,323.75)	(7,332.76)	(25,998.43)
Rent received from subtenants				591.60	2,890.90	1,045.80	1,845.10	2,693.70	2,750.00	7,380.00
Less: Depreciation of buildir s										(1,382.98)
Interest			473.86	1,116.97	2,103.40	744.28	1,359.12	1,112.69	942.66	2,386.73
Service charges and sundry					1,079.64	1,079.64			875.00	2,030.19
Collection of old accounts								509.11	1,574.84	3,376.24
Award by order of court								8,034.95	3,573.52	
	22,923.78	27,173.76	74,153.47	250,732.56	227,854.11	188,332.39	39,521.72	126,425.08	228,807.66	415,167.01
Operating expenses -										
Salaries and wages	2,448.50	2,008.33	6,127.12	24,343.72	24,297.25	13,028.28	11,268.97	13,640.64	20,543.15	22,051.43
Commissions paid				1,400.00						306.39
Advertising and promotion	337.39	722.65	1,238.23	4,738.87	3,983.67	2,060.28	1,923.39	2,222.62	5,432.48	4,957.41
Travel expense	3,082.71	2,316.09	5,301.00	10,828.25	10,573.84	5,448.21	5,125.63	7,051.95	9,636.97	11,646.84
Automobile expense		2,080.09	3,737.58	4,051.41	3,965.13	1,947.94	2,017.19	2,402.31	3,626.98	3,480.55
Express and postage									2,617.70	2,458.86
Shop supplies and expense				1,595.64	822.41	455.12	367.29	312.32	588.59	2,484.89
Shop and office rent	400.00	975.00	2,642.03	3,148.00	5,850.00	2,400.00	3,450.00	4,950.00	6,700.00	7,700.00
Office supplies and expense	555.90	613.35	1,121.51	4,291.23	5,486.38	1,888.37	3,598.01	2,379.78	2,386.58	2,868.88
Telephone and telegraph	1,233.28	1,768.32	3,812.08	7,248.09	5,647.38	2,920.33	2,727.05	3,336.38	4,757.30	5,385.70
Heat, light and water			332.66		472.49	484.37	(11.88)	348.38	698.28	888.44
Engineering expense				1,795.84	471.89	316.53	155.36	134.85		
Professional services				1,278.30	7,897.47	1,575.00	6,322.47	5,188.38	6,864.63	5,888.38
Miscellaneous	1,327.16	126.53	370.46	374.57	635.20		635.20	271.01	1,780.34	683.36
Insurance - General	69.03	1,156.17	1,150.80	1,672.96	4,556.27	978.00	3,578.27	1,500.38	2,651.89	2,772.69
- Life										20,488.00
Employment taxes	10.43	50.16	34.51	1,351.62	1,113.81	676.07	437.74	706.93	979.91	688.38
Property taxes and licenses	24.00	9.10	173.10	420.00	1,737.93	403.73	1,334.20	1,738.54	1,488.49	1,387.58
Depreciation expense	83.77	2,626.10	2,738.61	5,319.85	6,093.10	3,148.65	2,944.45	2,897.36	4,648.77	4,810.38
Amortization of leasehold				1,543.80	1,543.46	771.90	771.56	1,157.40	489.88	514.19
Uncollectible accounts written off				24,749.19	4,312.17	3,000.00	1,312.17			
Provision for bad debts									2,810.94	20,438.59
Interest expense	1.41	11.00	52.85	951.21	1,395.05	871.85	523.20	361.98	1,387.41	714.58
Total selling and general expenses	9,573.58	14,462.89	28,832.54	101,102.55	90,854.90	42,374.63	48,480.27	50,278.77	79,360.98	120,488.24
Net profit for period	$13,350.20	$12,710.87	$45,320.93	$149,630.01	$136,999.21	$145,957.76	$ (8,958.55)	$ 76,146.31	$149,446.68	$294,678.77

PRENTICE MACHINE WORKS, INC.
Portland, Oregon

COMPARATIVE INCOME STATEMENT

	Year ended 2/28/53		Year ended 2/28/54		Year ended 2/28/55	
Sales		145,926.43		102,047.07		136,908.21
Cost of goods sold, per Schedule I		120,636.58		84,445.86		88,166.39
Gross profit on sales		25,289.85		17,601.21		48,741.82
General expenses -						
Salaries - Office (allocation)	8,918.46		6,537.50		4,850.00	
- Officers	10,000.00		6,150.00		18,800.00	
Employment taxes - allocation	644.58		473.85		938.50	
Office supplies and expense	1,348.96		610.61		326.47	
Telephone	338.70		317.57		302.41	
Allocation of salaries and expenses of affiliated office	902.45		--		--	
Automobile and travel expenses	1,757.03		794.27		1,118.49	
Professional services	1,035.03		1,660.45		2,095.00	
Sundry	28.37		38.19		24.50	
Interest expense	500.00		450.00		400.00	
Total general expenses		25,473.58		17,032.44		28,855.37
		(183.73)		568.77		19,886.45
Other Income -						
Commission income			21.60			
Discounts taken	270.45	270.45	211.07	232.67	243.50	243.50
Net profit before taxes		86.72		801.44		20,129.95
State and Federal income taxes		33.02		285.32		7,166.27
Net profit for year		$ 53.70		$ 516.12		$12,963.68
Salaries paid to members of partnership, E. V. Prentice Co., and listed in general expenses, above		$10,000.00		$ 6,150.00		$18,800.00

These salaries have not been included as income on the books of the partnership, E. V. Prentice Co., but they have been treated as personal income by each of the members of the partnership.

E. V. PRENTICE CO.

COMPARISON OF SALES AND GROSS PROFIT BY FIRST AND LAST HALVES OF EACH CALENDAR YEAR

	Year 1949		Year 1950		Year 1951	
	Jan.-June	July-Dec.	Jan.-June	July-Dec.	Jan.-June	July-Dec.
Gross Sales	7,762.28	43,024.14	99,837.45	213,476.28	412,468.32	533,871.63
Gross profit	2,314.19	12,811.27	12,583.63	44,875.89	75,500.00	101,452.06

	Year 1952		Year 1953		Year 1954	
	Jan.-June	July-Dec.	Jan.-June	July-Dec.	Jan-June	July-Dec.
Gross Sales	576,650.81	230,185.76	167,541.39	157,764.97	273,331.38	397,081.19
Gross Profit	163,699.45	24,811.29	54,469.90	61,242.52	107,786.39	146,007.12

Present information indicates that the second half of the year 1955 will have substantially more gross sales and gross profit than the first half of 1955.

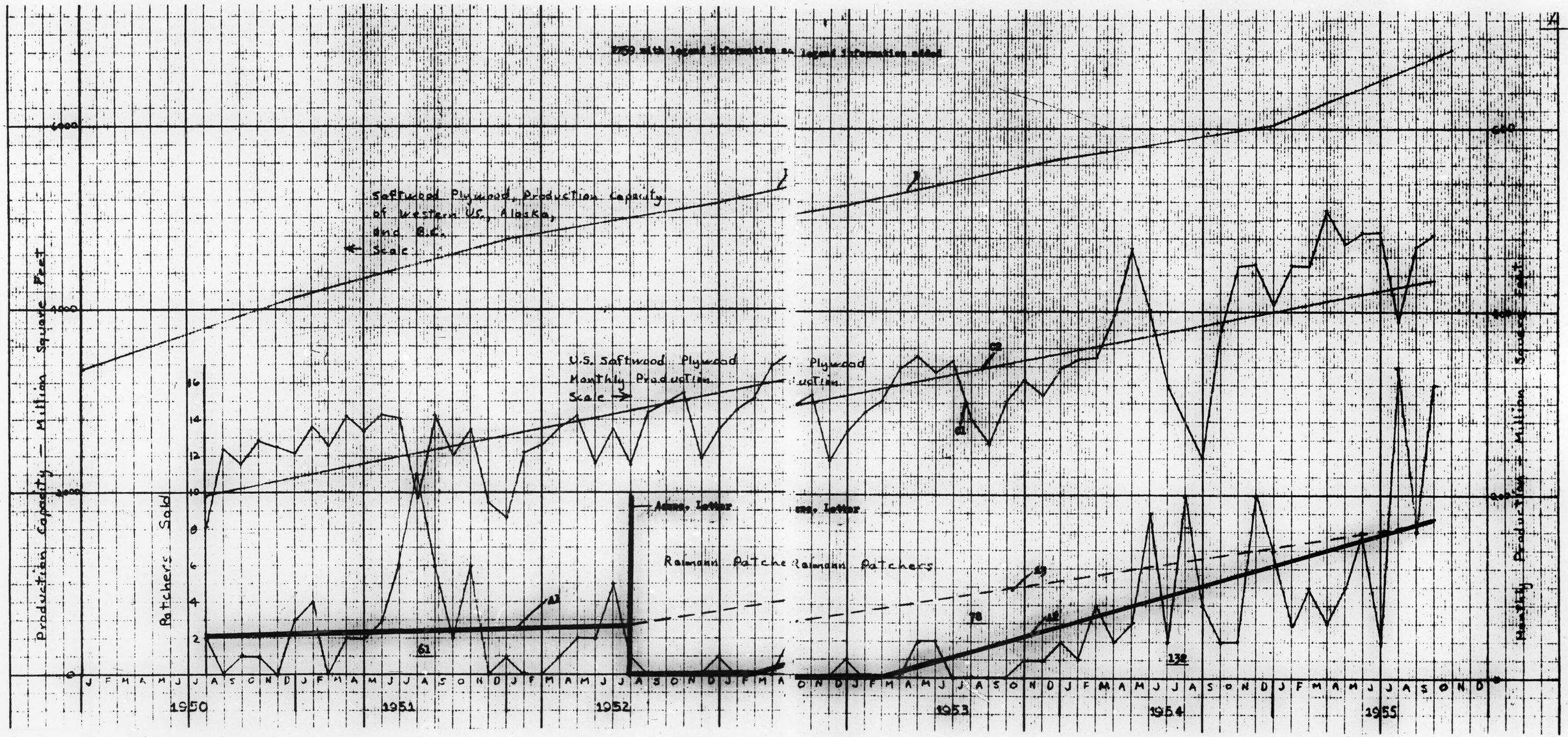
PRENTICE MACHINE WORKS, INC.

COMPARISON OF SALES AND GROSS PROFIT BY FIRST AND LAST HALVES OF EACH FISCAL YEAR

	First fiscal year		Second fiscal year		Third fiscal year		3/1/55 to
	3/1/52 to 8/31/52	9/1/52 to 2/28/53	3/1/53 to 8/31/53	9/1/53 to 2/28/54	3/1/54 to 8/31/54	9/1/54 to 2/28/55	8/31/55 Approx.
Sales	129,203.68*	16,722.75**	53,706.59	48,340.48	73,521.41	63,386.80	180,000.00
Cost of Sales	97,153.76	23,482.82	42,291.91	42,153.95	50,843.41	37,322.98	109,000.00
Gross Profit	32,049.92	(6,760.07)	11,414.68	6,186.53	22,678.00	26,063.82	71,000.00
Other income and expenses excluding salaries to Prentice brothers	7,601.42	7,601.41	5,860.56	4,709.21	2,814.50	6,997.37	6,000.00
Profit before salaries to Prentice brothers and corporation income taxes	$24,448.50	($14,361.48)	$ 5,554.12	$ 1,397.32	$19,863.50	$19,066.45	$65,000.00

* Includes some sales up to 11/30/52 but all from orders prior to period of interference.

** Almost no orders were unfilled at 2/28/53.


1959 with legend information as
legend information added
Softwood Plywood, Production Capacity of western U.S., Alaska, and B.C.
← Scale
U.S. Softwood Plywood Monthly Production
Scale →
Plywood
uction
Production Capacity — Million Square Feet
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Monthly Production — Million Square Feet
Adams Letter
Raimann Patchers
Raimann Patchers
1950
1951
1952
1953
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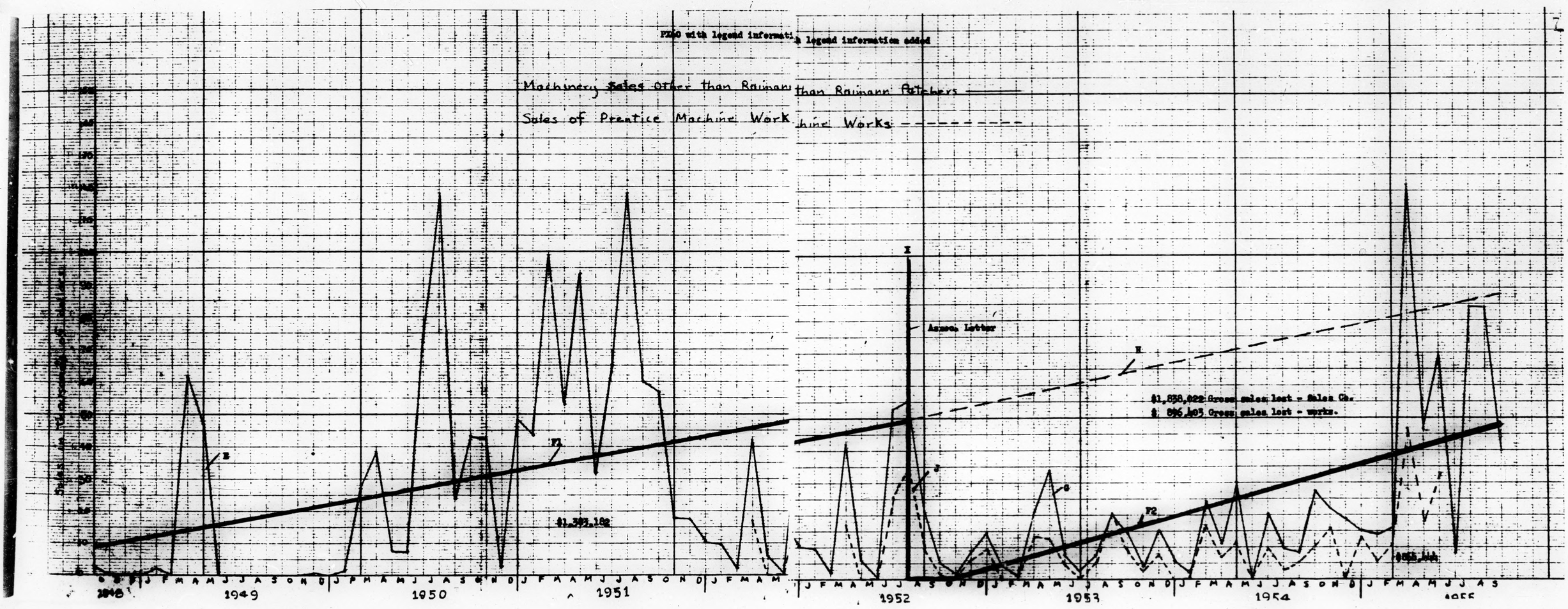
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Machinery Sales Other than Rainarn
Sales of Prentice Machine Work
E
F1
$1,393,182
1948
1949
1950
1951
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than Rainarn Fletchers
hine Works
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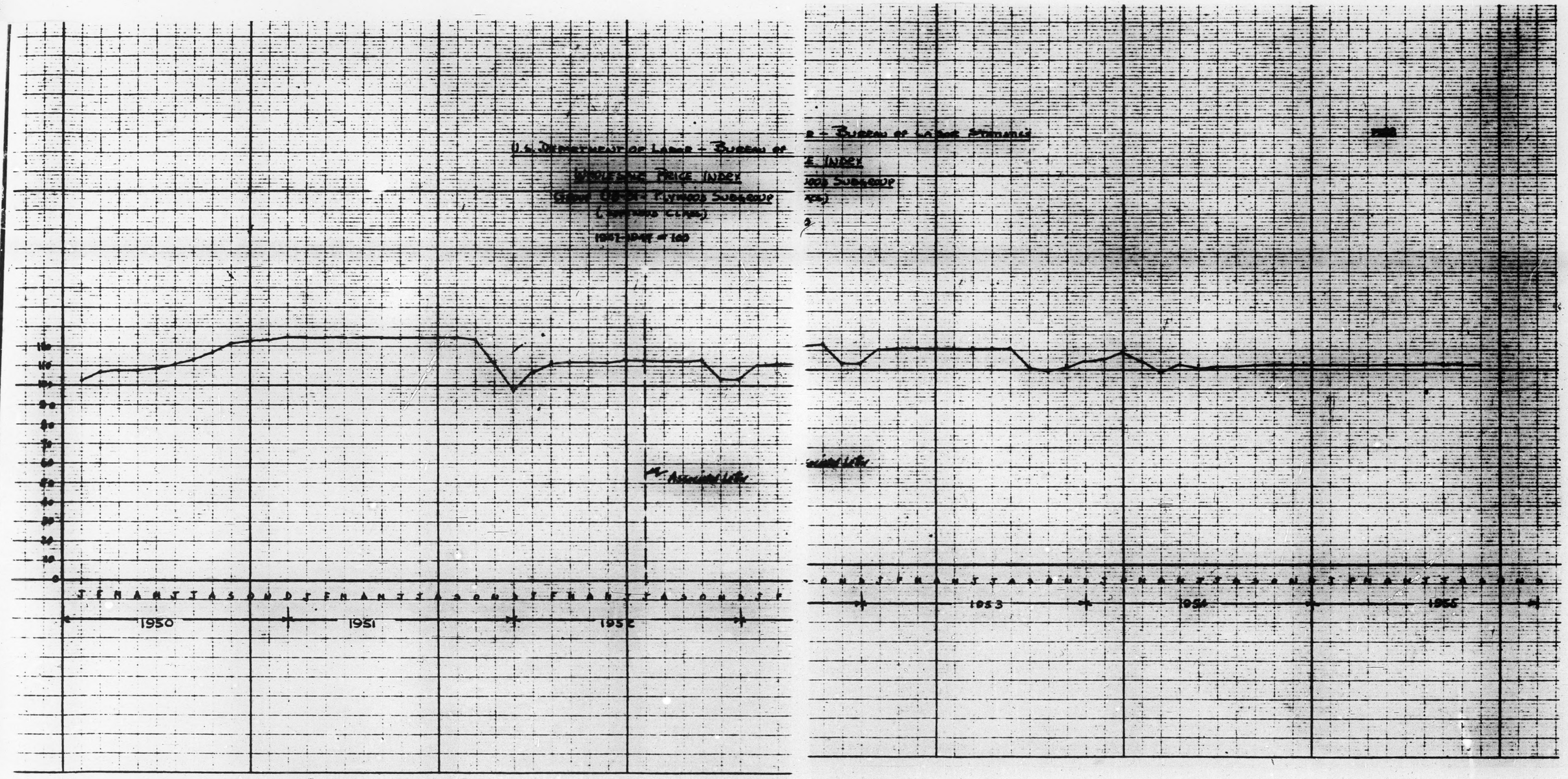
Annex Letter
H
$1,838,022 Gross sales lost - Sales Co.
$ 896,403 Gross sales lost - works.
J
G
F2
1952
1953
1954


U.S. Department of Labor - Bureau of
Wholesale Price Index
1957-59 = 100
1950
1951
1952
1953
1954
1955

L. V. [redacted] Co.

Monthly Orders of Machines Other Than Coinmen Polishers For the Months Shown

Year & Month	Orders
1952	
January	$ 9,650.00
February	2,290.42
March	42,180.00
April	5,850.90
May	126.00
June	22,680.50
July	56,220.00
August	20,[illegible]9.00
September	5,270.00
October	2,180.00
November	9,112.00
December	14,816.00

E. V. PRENTICE COMPANY

and

PRENTICE MACHINE WORKS, INC.

Schedule of Orders Received for Machines

For the Periods Shown

		E. V. Prentice Co. No. of Faimann Patchers	E. V. Prentice Co. All Other Machinery
YEAR BEFORE SMITH & TUCK LETTER:			
August	1951	6	$59,063
September		2	57,481
October		6	17,887
November			17,651
December		1	10,082
January	1952		9,650
February			2,390
March		1	42,160
April		2	5,850
May		2	135
June		5	52,620
July		1	55,220
	Total for 12 months	26	$330,989
YEAR AFTER SMITH & TUCK LETTER:			
August	1952		20,329
September			5,270
October			2,150
November			9,113
December		1	14,815
January	1953		4,250
February			1,325
March			21,085
April		2	33,660
May		2	7,545
June			2,574
July			7,725
	Total for 12 months	5	$129,841

E. V. PRENTICE MACHINERY COMPANY
Portland, Oregon

Statement of Operations
for the Periods Shown Below

	Per Statement Furnished by the E.—V. Prentice Machinery Company		Computation Based on Ratable Distribution of Income and Expense	
	Year Ended December 31, 1952	Six Month Period Ended June 30, 1952	Six Month Period Ended December 31, 1952	Six Month Period Ended June 30, 1952	Six Month Period Ended December 31, 1952
SALES	$806,836.57	$576,650.81	$230,185.76	$576,650.81	$230,185.76
COST OF GOODS SOLD:	618,325.83	412,951.36	205,374.47	441,921.09	176,404.74
Gross profit %	(23.4) %	(28.4) %	(10.8) %	(23.4) %	(23.4) %
Gross profit on sales	188,510.74	163,699.45	24,811.29	134,729.72	53,781.02
Commission income	31,896.10	21,097.88	10,798.22	21,097.88	10,798.22
Gross profit and commissions	220,406.84	184,797.33	35,609.51	155,827.60	64,579.24
OTHER INCOME:					
Equipment rent	2,550.00	900.00	1,650.00	900.00	1,650.00
Less: Depreciation applicable	(1,176.67)	(234.66)	(942.01)	(234.66)	(942.01)
Rent received from sub-tenants	2,890.90	1,045.80	1,845.10	1,045.80	1,845.10
Interest	2,103.40	744.28	1,359.12	744.28	1,359.12
Service charges and sundry	1,079.64	1,079.64		1,079.64	
TOTAL GROSS OPERATING INCOME	227,854.11	188,332.39	39,521.72	159,362.66	68,491.45
OPERATING EXPENSES:					
Salaries and wages	24,297.25	13,028.28	11,268.97	13,028.28	11,268.97
Advertising and promotion	3,983.67	2,060.28	1,923.39	2,060.28	1,923.39
Travel expense	10,573.84	5,448.21	5,125.63	5,448.21	5,125.63
Automobile expense	3,965.13	1,947.94	2,017.19	1,947.94	2,017.19
Shop supplies expense	822.41	455.12	367.29	455.12	367.29
Shop and office rent	5,850.00	2,400.00	3,450.00	2,925.00	2,925.00*
Office supplies and expense	5,486.38	1,888.37	3,598.01	2,743.19	2,743.19*
Telephone and telegraph	5,647.38	2,920.33	2,727.05	2,920.33	2,727.05
Heat, light and water	472.49	484.37	(11.88)	236.24	236.25*
Engineering expense	471.89	316.53	155.36	316.53	155.36
Professional services	7,897.47	1,575.00	6,322.47	1,575.00	6,322.47
Miscellaneous	635.20		635.20		635.20
Insurance - general	4,556.27	978.00	3,578.27	2,278.13	2,278.14*
Employment taxes	1,113.81	676.07	437.74	676.07	437.74
Property taxes and licenses	1,737.93	403.73	1,334.20	868.96	868.97*
Depreciation expense	6,093.10	3,148.65	2,944.45	3,148.65	2,944.45
Amortization of leasehold	1,543.46	771.90	771.56	771.90	771.56
Uncollectible accounts written off	4,312.17	3,000.00	1,312.17	2,156.08	2,156.09*
Interest expense	1,395.05	871.85	523.20	871.85	523.20
Total operating expenses	90,854.90	42,374.63	48,480.27	44,427.76	46,427.14
NET PROFIT OR (LOSS) FOR PERIOD	$136,999.21	$145,957.76	$(8,958.55)	$114,934.90	$ 22,064.31

* Amounts adjusted ratably for six month distribution.

DK307

E. V. PRENTICE MACHINERY CO.

vs.

ASSOCIATED PLYWOOD MILLS, INC.

Portland, Oregon

Schedule of Sales by E. V. Prentice Machinery Co. by Years and Three-Month Quarters for the Period January 1, 1948 to June 30, 1955

	Total	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
1948	$ 78,803	$ 31,501	$ 20,753	$ 19,395	$ 7,154
1949	50,786	5,513	2,314	33,858	9,101
1950	273,314	37,222	22,616	84,589	128,887
1951	946,340	127,784	284,504	238,127	295,925
1952	806,837	414,301	162,350	99,868	130,318
1953	325,306	71,432	96,109	57,674	100,091
1954	670,384	95,794	180,538	193,166	200,886
1955	724,138	268,444	249,944	205,750*	
Total Sales by Quarters	$3,875,908	$1,051,991	$1,019,128	$ 932,427	$ 872,362

NOTE - *One month only - July, 1955.